

ANTONIO SOSA  
D-78515, C-317L  
P.O. BOX 689, CTF II (C)  
SOLEDAD, CA 93960-0689

FILED  
08 JAN 25 PM 4:24  
RICHARD H. FICKLER  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ANTONIO SOSA,

V.

B. CURRY, Warden, et al.,

No. C 07-5830 WHA (PR)

FIRST AMENDMENT TO  
PETITION FOR WRIT OF HABEAS CORPUS  
PURSUANT TO ORDER OF THE  
MAGISTRATE JUDGE (Filed Jan.3, 08)

**COMES PETITIONER**, ANTONIO SOSA, and submits the following  
First Amendment to his Original Habeas Corpus Petition now before  
this Court, for the following reason[s], to wit:

1. The Magistrate Judge has granted Petitioner leave to  
clarify his Petition as to the parole denial that he is attacking,  
and he must also demonstrate how he has been victimized by the  
allegedly-unconstitutional procedures he objects to: "Some Evidence"  
Test Principle, inter alia. Relief is for the 12/5/05 Subsequent Hrng.

a. As to the use by Board and Courts of the "Some  
Evidence" Test Principle versus, the "Preponderance of Evidence"  
or "Clear and Convincing" standards of Proof before the B.P.H. and  
the Courts on de novo review, it makes it impossible for Petitioner  
to 'prove' he is suitable for parole. Only that the Board Panels have  
violated his "Due Process Clause" rights under the U.S. Constitution

FIRST AMENDMENT TO PETITION FOR WRIT OF HABEAS CORPUS  
(Cont.):

1 Fourteenth Amendment, making it next to impossible to 'prove' he  
2 is suitable for parole, because all the Panels need to prove is  
3 "any modicum" of evidence with "an indicia of reliability" that the  
4 prisoner "would pose an unreasonable risk of danger to society  
5 or a threat to public safety if released from prison. Certainly,  
6 the first thing that we considered was your commitment offense..."  
7 In fact, Petitioner has proved in his State habeas petitions in  
8 the three State Court levels, that the Board has created a "Protect-  
9 ed Liberty Interest" violation against Petitioner, because his com-  
10 portment (exemplary & unblemished), and his accomplishments in pri-  
11 son all point inexorably to a prisoner who has rehabilitated and  
12 is ready for parole. Instead, the Board has condemned him to a Life  
13 In Prison Without Parole sentence; a happenstance that has been re-  
14 peated through five (5) parole consideration hearings, and shows  
15 no signs of abatement. (Please see State habeas corpus petitions  
16 attached to the Original Petition filed with this Court.)

17 b. Title 15 Division Two, § 2236; (The B.P.H.'s own  
18 self-promulgated Rules and Guidelines for conducting Parole Suit-  
19 ability Considerationn Hearings,) it is NOT a requirement for the  
20 prisoner to admit, confess, or even discuss the Commitment offense  
21 before the Panels, and that refusal to do so cannot be held against  
22 the candidate prisoner as far as parole consideration is concerned.  
23 Yet, that is exactly what the visiting District Attorney suggested  
24 in his recommendation for a finding against suitability, when he  
25 incorrectly stated; DEPUTY DISTRICT ATTORNEY ROSE:: "Thank you."  
26 . . . "It's the People's position that a date should not be granted. In fact,  
27 Mr. Sosa won't be ready within a year or two or maybe even three to get a date  
28 until he accepts responsibility for what he did..." (Underscoring added.).

1 It has become common for the D.A.'s Representative to participate  
2 in Hearings contemporaneously as if he too is one of the Commissioners  
3 and comment on what the Panels should do as far as application of law  
4 is concerned. This D.A. did exactly that, and Ms. Susan Fisher, a  
5 Victim's Right Advocate Organization member and President; happily  
6 'let' him do that. Fortunately, her lack of professionalism and  
7 her naked bias during hearings assured her removal from her post as  
8 A Commissioner. and Board Chairperson. Accordingly, Petitioner specifically  
9 asks this Court to afford him the opportunity to have another Hearing  
10 which is impartial and follows the Board's own Rules and Guidelines  
11 and the now numerous Court Findings and Orders in one case after ano-  
12 ther in State and Federal Courts treating with these same issues.

13 c. On habeas corpus de novo review the Courts often  
14 opine that contentions or assertions by petitioners are "conclusiory"  
15 or "vague". Therefore, Petitioner would like to cite an example of  
16 superb quality and articulate observations by a Superior Court  
17 Judge in her Order to Respondents ordering that the Board of Parole  
18 Hearings Commissioners undergo substantive training, if in fact,  
19 they are being truthful when they state they are impartial and unbiased  
20 interrogators in their hearings; Please see, In re Jamieson, Case No.  
21 71194, Superior Court of Santa Clara County (Aug. 30, 2007, pp.26-27 );

22 "The conclusive nature of the proof in this case, and the suggestion  
23 of institutional bias do not preclude formulation of a remedy which  
24 will guarantee adequate restrictions on, and guidance for, the Board's  
25 exercise of discretion in making parole suitability determinations.  
26 The Board can be made to lawfully perform its duties if given explicit ins-  
27 tructions.  
28 As noted, supra, a reason the case on this case irrefutably establish-  
es constitutional violations is because the Board does not, in actual  
fact, operating within the limiting construction of the regulations.  
The Board's expansive interpretation allows it to operate without any"

"true standards. Although numerous rulings of both state and federal courts of appeal have invalidated the Board's application of the § 2402(c) criteria to particular facts, the Board does not take guidance from these binding precedents and ignores them for all other purposes. (underscoring added.) In the most recent of these cases In re Roderick, (2007) \_\_\_ Cal. App. 4th \_\_\_ (A 113370); the First District held four of the five § 2402 factors "found" by the Board to be unsupported by any evidence. At footnote 14 the court took the time to criticize the Board for its repeated use of a "stock phrase" "generically across the state." The Court also clarified that "at minimum," the Board is responsible for articulating the grounds for its findings and for citing to evidence supporting these grounds.

There is nothing in the evidence presented that would allow any conclusion but that, without intervention of the Courts, the Board will ignore the lessons of these rulings in the future and continue to employ its formulaic approach of citing criteria from § 2402(c)(1), repeating the facts of the crime, but never demonstrating a logical connection between the two. This is the core problem with the Board's methodology -- they provide no explanation or rationale for the findings regarding the crime itself. This practise results in violence to the requirements of due process and individualized consideration which are paramount to the appropriate exercise of its broad discretion.

The only solution is one that compels the Board to identify the logical connection between the facts upon which it relies and the specific criteria found to apply in the individual case, example, the Board often finds that an inmate's motive is "trivial" without ever suggesting why, on these facts, that motive is not just as trivial as the motive behind any murder. What motive is not trivial? By any definition, "trivial" is a word of comparison and only has meaning when there can be examples that are not "trivial."

... "Respondent has consistently refused to suggest what possible instances of murder would not fit the Board's amorphous application of the § 2402 criteria. Citing Dannenberg, Respondent insists such comparative analysis is unnecessary. Respondent fundamentally"



"misunderstands the Dannenberg holding.

The P.C. § 3041(b) exception to the rule can only be invoked when the "gravity of the current convicted offense or offenses, is such that the consideration of the public safety requires a more lengthy period of incarceration for this individual." The word "gravity" is a directive for comparison just as "more lengthy" indicates a deviation from the norm. While Dannenberg held there does not need to be intra case comparison for the purposes of term uniformity or proportionality, there necessarily has to be some sort of comparison for the purposes of adhering to the legislative mandate that parole is available. This is implicit in § 2402 because the qualifier "especially" in "especially heinous or atrocious or cruel," requires that some sort of comparison be made (Underscoring added.) While the original drafters of § 2402 seemed to have recognized this fact, the on-going conduct of the Board has completely ignored it, and this is the essence of the due process violations Petitioners have asserted..."

"In the vast numbers of Santa Clara county cases reviewed by this Court, the Board's formulaic decisions regarding the commitment offence do not contain any explanation or thoughtful reasoning. Instead, the Board's conclusionary invocation of words from § 2402(c)(1), is linked to a repetition of the facts wherein ... "Thereafter the inmate files a habeas corpus petition and Respondent, after requesting an Extension of Time, files a boilerplate reply asserting the Board's power is "great" and "almost unlimited" and thus any "modicum" of evidence suffices. Respondent does not cite or distinguish the expanding body of case law that is often directly on point as to specific findings made. Thereafter, if the writ is granted, the Board is directed to conduct a new hearing "in compliance with due process" and that Order is appealed by Respondent. On appeal the Order is usually upheld with modifications and in the end, after countless hours of attorney and Judicial time, the Board conducts a new two hour hearing at which their discretion and and due process is violated in some different way.

This system is malfunctioning and must be repaired. The solution must begin with the source of the problem. The Board must make efforts to comply with due process in the first instance. The case law published over the last five years provides ample and sufficient guidelines and must be followed. Although the Board methods suggest it believes"

"this to be optional, it is not...."

REMEDY

Thus, it is the Order of this Court that the Board develop, submit for approval, and then institute a training policy for its members based on the current and expanding Body of published state and federal case law reviewing parole suitability decisions, and specifically the application of § 2402 criteria. In addition to developing guidelines and further criteria for the substantive application of § 2402 the Board must develop rules, policies and procedures to ensure that the substantive guidelines are followed.

This Court its authority to impose this remedy to flow from the fundamental principles of Judicial review announced over two centuries ago in Madison v. Marbury, (1803) 5 U.S. (1Cranch) 137. Citing that landmark case, the California Supreme Court has recognized "Under time-honored principles of the common law, these incidents of the parole applicant's right to 'due consideration' cannot exist in any practical sense unless there also exists a remedy against abrogation." (In re Sturm, 11 Cal. 3d 258, 268.)

In Sturm, the Court directed that the Board modify its rules and procedures so that thereafter "The Authority will be required [,] commencing with the finality of this Opinion to support all its denials with a written, definitive statement of its reasons therefor and to communicate "(1) such a broadly all encompassing and universal application) is that they have unwittingly invalidated the basis of the California Supreme Court's holding in Dannenberg. The reason the four Justice majority in Dannenberg upheld the Board's standard operating procedures in the face of Appeal and Dissent positions is because "the Board must apply detailed standards when evaluating whether an individual inmate is unsuitable for parole on public safety grounds." (Dannenberg, at p. 1096, footnote 16. See also page 1080: "The regulations do set detailed standards and criteria for determining whether a murderer with an indeterminate life sentence is suitable for parole.") However, Petitioners in these cases have proven that there are no "detailed standards at all. (Underscoring added.) Instead the Board has systematically reduced the "detailed "

The Board must fashion a training program and further rules, standards and regulations based on the opinions and decisions of the state and federal court cases which provide a limiting construction to the criteria which are applied.<sup>8</sup> The Board must also make provisions for the continuing education of its commissioners as new case law is published and becomes binding authority...."

ORDER

LINDA R. CONDRON,  
JUDGE OF THE SUPERIOR COURT

d. Petitioner alleges, that not only in his last Hearing (1 Initial, 4 Subsequents), but this has been the attitude of the Panels in ALL his Hearings. However, Petitioner is attacking his last hearing on 12/5/08. The violations are Due Process Clause and



FIRST AMENDMENT TO PETITION FOR WRIT OF HABEAS CORPUS  
(Cont.):

1  
2 ex post facto - double jeopardy violations pursuant to the U.S.  
3 Constitution, Art. 1 §§ 9 & 10; & the Fifth Amendment. Ex post facto  
4 because Petitioner was already sentenced after a trial, by a bona  
5 fide Superior Court Judge in good standing with the State Bar & the  
6 State Bar Court, at considerable expense to the taxpayers of California  
7 utilizing many years of schooling and experience on the job by the  
8 Judge, Prosecutors and Defense Counsel; then comes the Cabal of  
9 Commissioners to re-try, re-convict, and resentence Petitioner over  
10 and over again, each time he has a pro forma, sub rosa quasijudicial  
11 'trial', complete with a prosecuting D.A., digging up facts that will  
12 never change, while ignoring the many years of imprisonment and exem-  
13 plary conduct on the part of this Petitioner; even 'inventing' new  
14 new, non-existing requirements to satisfy before Petitioner can even  
15 hope for a finding of suitability by these bought off persons. He  
16 is even recharged in the information with a 'new' offence; i.e.,  
17 "not yet suitable for parole and would pose an unreasonable risk of  
18 danger to society or a threat to public safety if released from prison".

19 CONCLUSION & PRAYER FOR RELIEF

20 WHEREFORE: Petitioner asserts he is illegally incarcerated  
21 by B. Curry, Warden, CTF II, and the B.P.H. Commissioners because 'he  
22 is custody in violation of the Constitution or laws of the United  
23 States." 28 U.S.C. § 2254(a); Rose v. Hodges, 423 U.S. 19, 21 (1975).  
24 As Petitioner stated in his Original Petition For Writ of Habeas Corpus  
25 to the Superior Court of California County of Los Angeles, (Pleas see  
26 Exhibit B to this Petition @ pp.3(w)- 3(x)):

27 "CONCLUSION"

28 "Petitioner feels he is suitable for parole. His record reflects"



1  
2 "same. His record was clean prior to the instant offense,  
3 and he has remained disciplinary-free since. Petitioner's  
4 crime of commitment does not qualify as "exceptionally cruel  
5 or insensitive to human suffering." Petitioner did not go out  
6 to hurt anyone: nor was such evidence ever presented.... The  
7 B.P.H. 'invented' false "some evidence" to insure Petitioner  
8 never qualifies for parole suitability. Petitioner's Due  
9 Process rights are abrogated. He has been subjected to ex post  
10 facto & double jeopardy violations by a corrupt Body that is  
11 sworn to follow and obey the laws of the State. They are not.

12 The present Commissioners of the Board of Parole Hearings  
13 are in no Honorable position or of legal authority to decide  
14 the suitability or unsuitability of Petitioner for parole.  
15 Petitioner cannot and will not accede to their inflated self-  
16 importance and corruption. Nor should this or any other Court  
17 in California. Just as the Governor has 'attempted' to recon-  
18 struct the institution called CDCR: just so, the Board of  
19 Parole Hearings must be 'cleaned up and cleared of' corrupt  
20 officials earning \$ 100,000 a year to kow-tow to the wishes  
21 of "pressured politicians" by a 'closure-famished public,'  
22 to forever punish sentenced indeterminate prisoners with an  
23 illegal, retroactively applied Life Without The Possibility  
24 of Parole sentence; until they die in prison.

25 WHEREFORE: for the foregoing reasons, Petitioner respect-  
26 fully requests this Court issue an Order To Show Cause to  
27 Respondents that he has presented a prima facie case that he  
28 is illegally incarcerated by the Commissioners of the B.P.H.,  
and Warden A.P. Kane, (now B. Curry), et al; and that they  
Answer to same. The Court is also asked to hold Evidentiary  
Hearings, after assigning an attorney to assist Petitioner.  
Finally, Petitioner enjoins this Court, upon full hearing[s],  
initiate procedures whereby the selection of an honest and  
brave B.P.H. is emplaced who will do their sworn duty, and  
and give Petitioner and his numerous contemporaries, honest,  
credible, lawful, parole hearings that do not violate the  
substantive Due Process Clause rights by ignoring its legal  
mandates, and even promulgating its own 'laws and/or creating"

"an unforeseeable judicial enlargement of the criminal statutes applied retroactively".

Petitioner stands by these original Conclusions and Prayer For Relief; and sincerely hopes this Court will issue the petitioned Order To Show Cause, order the Evidentiary Hearing[s] to afford Petitioner the opportunity to expand on his allegations, hopefully with the help of a Court appointed Attorney, and finally grant Petitioner the Petition For Writ of Habeas Corpus along with his request for a new impartial hearing; or whatever other curative measures this Court finds appropriate under the circumstances proved herein.

DATED: January 22, 2008

Respectfully submitted,

x Antonio Sosa  
ANTONIO SOSA, Petitioner  
IN PROPRIA PERSONAM  
IN FORMA PAUPERIS

Joseph P. Gutierrez  
JOSEPH P. GUTIERREZ,  
Layman Assistant, Pro Bono  
D-02765, Z-138L  
P.O. Box 689, CTF II (C)  
SOLEDAD, CA 93960-0689

EXHIBIT A

EXHIBIT A

EXHIBIT A



FILED

JAN - 3 2008

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ANTONIO SOSA,

No. C 07-5830 WHA (PR)

Petitioner,

**GRANT OF LEAVE TO PROCEED  
IN FORMA PAUPERIS; DISMISSAL  
WITH LEAVE TO AMEND**

v.

B. CURRY, Warden,

Respondent.

Petitioner, a California prisoner currently incarcerated at the Correctional Training Facility in Soledad, has filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He also requests leave to proceed in forma pauperis.

The petition attacks denial of parole, so venue is proper in this district, which is where petitioner is confined. *See* 28 U.S.C. § 2241(d) (venue proper in both district of conviction and district of confinement).

**DISCUSSION**

**A. STANDARD OF REVIEW**

This court may entertain a petition for writ of habeas corpus "in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a); *Rose v. Hodges*, 423 U.S. 19, 21 (1975). Habeas corpus petitions must meet heightened pleading requirements. *McFarland v. Scott*, 512 U.S. 849, 856 (1994). An application for a federal writ

1 of habeas corpus filed by a prisoner who is in state custody pursuant to a judgment of a state  
2 court must "specify all the grounds for relief which are available to the petitioner ... and shall set  
3 forth in summary form the facts supporting each of the grounds thus specified." Rule 2(c) of the  
4 Rules Governing § 2254 Cases, 28 U.S.C. foll. § 2254. "[N]otice' pleading is not sufficient,  
5 for the petition is expected to state facts that point to a 'real possibility of constitutional error.'" Rule 4  
6 Advisory Committee Notes (quoting *Aubut v. Maine*, 431 F.2d 688, 689 (1st Cir. 1970).  
7 "Habeas petitions which appear on their face to be legally insufficient are subject to summary  
8 dismissal." *Calderon v. United States Dist. Court (Nicolaus)*, 98 F.3d 1102, 1108 (9th Cir.  
9 1996) (Schroeder, J., concurring).

10 **B. LEGAL CLAIMS**

11 Petitioner pleaded guilty to second degree murder in the Superior Court for Los Angeles  
12 County. He was sentenced to prison for fifteen years to life. He alleges that he has exhausted  
13 these parole claims by way of state habeas petitions.

14 Petitioner does not say what parole denial he is attacking, so has not pleaded sufficient  
15 facts to allow the respondent to answer if an order to show cause were issued, and he has not  
16 alleged that he has been the victim of the allegedly-unconstitutional procedures he objects to, so  
17 has not shown a real possibility of constitutional error which would entitled him to release or a  
18 shorter period of incarceration.

19 Aside from these points, the Court reads petitioner's claim as being that the standard of  
20 proof applied by the Board of Parole Hearings should be at least "preponderance of the  
21 evidence," if not "clear and convicting;" that the Board presently uses "some evidence" as the  
22 standard; and that this is unconstitutional. Petitioner appears to contend, with some justice, that  
23 use of "some evidence" at the initial hearing level confuses the due process requirements for  
24 appellate review, which undoubtedly is "some evidence," with what due process requires ab  
25 initio. If this is interpretation of his claim is not correct, petitioner should clarify his contentions  
26 in the amended petition.

27 ///

28 ///

CONCLUSION

1. Leave to proceed in forma pauperis (document number 2) is Granted.

2. For the reasons discussed above, the petition is **DISMISSED** with leave to amend. If petitioner chooses to amend he must do so within thirty days of the date this order is entered. If no amendment is filed within thirty days, or if the amended petition is still deficient, this case will be dismissed without further leave to amend.

3. Petitioner is reminded that all communications with the court must be served on respondent by mailing a copy of the document to respondent's counsel. Papers intended to be filed in this case should be addressed to the clerk rather than to the undersigned. Petitioner also must keep the court informed of any change of address by filing a separate paper with the clerk headed "Notice of Change of Address," and comply with any orders of the court within the time allowed, or ask for an extension of that time. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). *See Martinez v. Johnson*, 104 F.3d 769, 772 (5th Cir. 1997) (Rule 41(b) applicable in habeas cases).

IT IS SO ORDERED.

Dated: 12/30/07

  
WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE



UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

ANTONIO SOSA,

Plaintiff,

v.

B CURRY et al,

Defendant.

---

Case Number: CV07-05830 WHA

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on January 3, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Antonio Sosa D-78515  
CTF II ©, C-317L  
P.O. Box 689  
Soledad, CA 93960-0689

Dated: January 3, 2008

Richard W. Wieking, Clerk  
By: D. Toland, Deputy Clerk



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address)		FOR COURT USE ONLY
ANTONIO SOSA D-78515, C-317L P.O. BOX 689, CTF II (C) SOLEDAD, CA 93960-0689 TELEPHONE NO.: FAX NO.:		
ATTORNEY FOR (Name):		
COURT UNITED STATES DISTRICT COURT STREET ADDRESS: NORTHERN DISTRICT CALIFORNIA MAILING ADDRESS: ATTN: CLERK OF THE COURT CITY AND ZIP CODE: U.S. COURTHOUSE, 450 GOLDEN GATE AVE. BRANCH NAME: SAN FRANCISCO, CA 94102-3483		
PETITIONER/PLAINTIFF: ANTONIO SOSA RESPONDENT/DEFENDANT: B. CURRY, Warden, B.P.H. Commissioners.		CASE NUMBER:
PROOF OF SERVICE BY MAIL		

1. I am at least 18 years of age, not a party to this action, and I am a resident of or employed in the county where the mailing took place.

2. My residence or business address is:

Antonio Sosa, D-78515, C-3151  
 P.O. Box 689, CTF II (C)  
 SOLEDAD, CA 93960-0689

3. I served a copy of the following documents (specify):

☒ Petition for Writ of Habeas Corpus [ ] \_\_\_\_\_

by enclosing them in an envelope AND

- a. ☒ depositing the sealed envelope with the United States Postal Service with the postage fully prepaid.  
 b. ☐ placing the envelope for collection and mailing on the date and at the place shown in item 4 following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

4. The envelope was addressed and mailed as follows:

- a. Name of person served: Clerk of The Court  
 b. Address: U.S. Dist. Ct. Nor. Dist. CA  
U.S. Courthouse, 450 Golden Gate  
 c. Date mailed: san Francisco, CA 94102-3483  
 d. Place of mailing (city and state):  
P.O. BOX 689, SOLEDAD, CA 93960-0689

Hon. Edmund G. Brown, J.R.  
☒ STATE ATTORNEY GENERAL CAL.  
 ATTN: Habeas Corpus Desk (B.P.H.)  
 Post Office Box 83266  
 San Diego, CA 92186-5266

5. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: JANUARY 22, 2008

ANTONIO SOSA

(TYPE OR PRINT NAME)

☒ Antonio Sosa

(SIGNATURE OF PERSON COMPLETING THIS FORM)

PROOF OF SERVICE BY MAIL